Thus, a carrier was held not liable for the loss of a quantity of tomatoes which spoiled because a shipment of packing cans was delayed. The carrier had been notified at the beginning of the canning season that all shipments must be rushed, as they were to be used for packing perishable goods. *Illinois, etc., R. Co.* v. *Hopkinsville Co.,* 132 Ky. 578, 116 S. W. 758. And where a shipper of household goods notified the carrier that such goods would be needed at once, and that the shipper would be unable to procure others, the carrier was nevertheless held not liable for physical discomfort and illness resulting from its refusal to deliver the shipment. *Alabama, etc., R. Co.* v. *McKenna* (Miss.), 61 South. 823.

Mere general knowledge of the importance of a shipment is insufficient. Information that a shipment of pipe is "very badly needed" is not enough. *Illinois, etc., R. Co.* v. *Johnson,* 116 Tenn. 624, 94 S. W. 600. The fact that the electric lights in the carrier's office were not burning was held not sufficient notice that a shaft consigned to the electric plant was needed for the generation of current. *Stone* v. *Adams Express Co.* (Ky.), 122 S. W. 200.

Sometimes the true ground of the decision in these cases is the distinction between cause and condition, or the doctrine of avoidable consequences. See *Williams* v. *R. Co.,* 56 Fla. 735, 48 South. 209, 131 Am. St. Rep. 169, 24 L. R. A. (N. S.) 134.

On the other hand, the mere fact that a heavy shaft was shipped by express instead of by freight was held sufficient notice that it was needed at once, and the consignee was allowed to recover for the idleness of his mill while the shaft was delayed. *Harper* v. *Express Co.,* 148 N. C. 87, 62 S. E. 145, 128 Am. St. Rep. 588, 30 L. R. A. (N. S.) 483. And where delivery of a threshing machine was delayed until after the threshing season, whereby the consignee lost a sale already contracted for, he was allowed to recover his expected profit. *Missouri Pacific R. Co.* v. *Peru-Van Zandt Co.,* 73 Kan. 295, 117 Am. St. Rep. 468. See also, *McConnell* v. *Express Co.* (Mich.), 146 N. W. 428; *Pecos, etc., R. Co.* v. *Maxwell* (Tex. Civ. App.), 156 S. W. 548.

DEAD BODIES—RIGHT OF ACTION FOR MENTAL ANGUISH RESULTING FROM MUTILATION.—Through the negligence of a common carrier a dead body was mutilated in transportation. The mother of the deceased brought suit to recover for mental anguish resulting from the occurrence, and joined her husband as a nominal party. The father was the next of kin to the deceased by the statute of distributions and hence upon him devolved duty of burying the child. *Held,* the mother cannot recover. *Floyd* v. *Atlantic Coast Line* (N. C.), 83 S. E. 12. See NOTES, p. 285.

EMINENT DOMAIN — COMPENSATION — BENEFIT—DAMAGES.—Under the power of eminent domain the defendant acquired a part of the plaintiff's land for a railroad right of way. The plaintiff sued for damages. *Held,* the benefits to the residue of the plaintiff's land arising from the construction of the railroad will not be deducted from the aggregate

damages. *Lexington and E. Ry. Co.* v. *Napier's Heirs* (Ky.), 169 S. W. 1017.

The method of estimating damages in the exercise of the power of eminent domain varies with the policies of the several States in interpreting the compensation clauses of their constitutions. In these cases benefits accruing to a property owner by reason of the use to which the condemned land is put are properly classed as general or special. Where an increase in the value of land in such case is common to the landowners of the community as a whole, the benefit is said to be general. 2 LEWIS, EMINENT DOMAIN, 2 ed., § 471. Special benefits are those which are peculiar to the owner of the land condemned and not such as are received in common by the whole community. 2 LEWIS, EMINENT DOMAIN, 2 ed., § 476. In Kentucky it is held that direct damages, such as the actual value of the land and improvements, may not be diminished by any benefit which will accrue to the remainder by reason of the work in question; but in estimating consequential damages, such as will probably result from the existence and operation of the work or improvement, such may be diminished by any benefit which will accrue to the remaining land by reason of the use to which the condemned land is put. *Big Sandy Ry. Co.* v. *Dils*, 120 Ky. 563, 87 S. W. 310.

There seem to be four principal rules regulating the set off of such benefits: (1) Benefits general and special may be set off against the value of the land actually taken as well as against the damages to the residue. *Stephens* v. *Cambria and I. Ry. Co.*, 242 Pa. 606, 89 Atl. 672; *McDougald* v. *Southern Pac. Ry. Co.*, 162 Cal. 1, 120 Pac. 766. (2) Special benefits only may be set off against the value of the land actually taken and the damage to the residue. *Chicago Great Western R. Co.* v. *Kemper* (Mo.), 166 S. W. 291; *Long Island R. Co.* v. *State*, 157 App. Div. 12, 141 N. Y. Supp. 687. (3) Special benefits may not be set off against the value of the land actually taken, but only against the damages to the residue, and general benefits are not considered. *Oil Belt Ry. Co.* v. *Lewis*, 259 Ill. 108, 102 N. E. 228; *Fort Worth, etc., of Tarrant County* v. *Weatherred* (Tex.), 149 S. W. 550; *Morrison* v. *Fairmont & C. Traction Co.*, 60 W. Va. 441, 55 S. E. 669. (4) Neither general nor special benefits may be set off against either the value of the land actually taken or the damages to the residue. *Penrice* v. *Wallis*, 37 Miss. 172.

Heretofore Mississippi has been the sole adherent of the last rule. It would seem, however, by the decision in the principal case that Kentucky has adopted it.

On principle the second rule commends itself most strongly. The purpose of remuneration in the exercise of the power of eminent domain is to compensate, not to benefit. The rule of compensation should be as just for the purchaser as for the seller. If the latter is in as good a position as he was prior to the taking, he has no cause for complaint. But if special benefits are not deducted, the seller makes a profit and injustice results to the purchaser. It is obviously unjust to permit a set off of general benefits, as the particular property owner is not benefitted above the rest of the community. The second rule is fol-

lowed by the Federal courts in their interpretation of the constitutional requirement of just compensation in such cases. *Bauman* v. *Ross*, 167 U. S. 548.

EVIDENCE—RAPE—COMPLAINT.—In a prosecution for assault with intent to commit rape on a child under the age of consent, the mother of the prosecutrix was allowed to testify to the details of the complaint and further that the prosecutrix named the defendant as her assailant. *Held*, not prejudicial error. *State* v. *Whitman* (Ore.), 143 Pac. 1121.

If the complaint is so closely connected with the act as to be part of the *res gestæ*, where the fact speaks through the person acting, the details of the complaint are admissible to prove the crime. *State* v. *Ellison* (N. M.), 144 Pac. 10. Otherwise third parties are allowed to testify as to the complaint for the purpose of corroborating the prosecuting witness and to rebut any inference of consent, but not to prove the defendant's guilt. *Thompson* v. *State*, 38 Ind. 39. In England the details of the complaint are received as well as the fact, in this case. *Reg.* v. *Lillyman*, L. R. 2 Q. B. (1896) 167. But in this country the rule is different, and if the complaint is not a part of the *res gestæ*, or if no attempt is made to impeach the prosecuting witness, the weight of authority confines such testimony to the bare fact that complaint was made. *Thompson* v. *State*, *supra*; *Proper* v. *State*, 85 Wis. 615, 55 N. W. 1035; *Posey* v. *State*, 143 Ala. 54, 38 South. 1019. The admission of the details of the complaint in such case is prejudicial error. *State* v. *Niles*, 47 Vt. 82; *Thompson* v. *State*, *supra*. Likewise a third person will not be allowed to testify that the prosecutrix named the defendant as her assailant. *State* v. *Niles*, *supra*; *Thompson* v. *State*, *supra*; *State* v. *Griffin*, 43 Wash. 591, 86 Pac. 951. It is held in one jurisdiction though, that if the prosecutrix be of tender years the details of the complaint will be admitted. *People* v. *Gage*, 62 Mich. 271, 28 N. W. 835. But not if the prosecutrix be an adult. *People* v. *Marrs*, 125 Mich. 376, 84 N. W. 284. In a few jurisdictions the details are admissible in any case. *State* v. *Kinney*, 44 Conn. 153, 26 Am. Rep. 436; *Hill* v. *State*, 73 Tenn. 725; *State* v. *Andrews*, 130 Iowa 609, 105 N. W. 215.

The reason for excluding the details while admitting the fact of the complaint has never been clear. If the sole ground for admitting the testimony is to rebut any inference of consent of the prosecutrix, it would seem that the fact alone should be admitted, since this would be sufficient to rebut the inference. Where the prosecutrix is under the age of consent, as in the principal case, this reason fails, and it would seem that this hearsay evidence should not be admitted. See *State* v. *Birchard*, 35 Ore. 484, 59 Pac. 468. But where, as in most such cases, such testimony is admitted on the broader ground of corroborating the testimony of the prosecutrix, the details would seem as pertinent as the fact. Nor would the admission of the details seem to be any more prejudicial to the defendant, provided the witness is not allowed to testify that the defendant was named as the assailant.